

## Chapter NR 168

### BROWNFIELD SITE ASSESSMENT GRANT PROGRAM

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**Note:** The enabling statutory language for implementing Brownfield Site Assessment Grants, s. 292.75, Stats., was renumbered s. 238.11, Stats. Implementation of this program is now the responsibility of the Wisconsin Economic Development Corporation (WEDC). However, WEDC does not have authority to implement the provisions contained in ch. NR 168.

**Note:** Chapter NR 168 was created as an emergency rule effective July 10, 2000.

**NR 168.01 Purpose and applicability.** The purpose of this chapter is to establish procedures for implementing a brownfield site assessment grant program as provided for in s. 292.75, Stats. Grants made under this program will assist local governmental units in assessing environmental contamination and conducting eligible activities on eligible brownfield sites or facilities.

**History:** Cr. Register, January, 2001, No. 541, eff. 2–1–01.

**NR 168.03 Definitions.** In this chapter:

(1) “Applicant” means a local governmental unit seeking a brownfield site assessment grant under this chapter.

(2) “Department” means the department of natural resources.

(3) “Eligible site or facility” has the meaning given in s. 292.75 (1) (a), Stats.

**Note:** Section 292.75 (1) (a), Stats., defines “eligible site or facility” to mean one or more contiguous industrial or commercial facilities or sites with common or multiple ownership that are abandoned, idle, or underused, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

(3m) “Environmental contamination” means a hazardous substance that has been discharged into the air, land, or water of the state.

(4) “Grantee” means an applicant that has been awarded a grant under this chapter, which has been signed by the department.

(5) “Investigation of environmental contamination” means activities associated with conducting, documenting or completing a phase I environmental assessment, a phase II environmental assessment or a site investigation.

(6) “Large grant” means a grant award to a local governmental unit, for an amount greater than \$30,000 but not more than \$100,000 of state funds under this chapter.

(7) “Local governmental unit” has the meaning given in s. 292.75 (1) (b), Stats.

**Note:** Section 292.75 (1) (b), Stats., defines “local governmental unit” to mean a city, village, town, county, redevelopment authority created under s. 66.1333, Stats., community development authority created under s. 66.1335, Stats., or housing authority. Under the authority of s. 20.002 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield site assessment grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

(8) “Matching funds” means the cash or in-kind contribution, or both, required under s. 292.75 (7), Stats., and given in s. NR 168.17.

(8m) “Past costs” means costs and services specified in s. NR 168.09 which were incurred after January 1, 1990 by any local governmental unit at the eligible site or facility which is the subject of the grant request under this chapter. Past costs do not include ineligible costs outlined in s. NR 168.19, costs that have been or will be reimbursed by any other grant program, or costs pledged as matching funds for grants awarded in prior grant cycles under this chapter.

(9) “Petroleum product” has the meaning given in s. 101.143 (1) (f), Stats.

**Note:** Section 101.143 (1) (f), Stats., defines “petroleum product” to mean “gasoline, gasoline–alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil.”

(10) “Phase I environmental assessment” has the meaning given in s. NR 750.03 (5).

**Note:** Section NR 750.03 (5) defines “phase I environmental assessment” to mean “an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site.”

(11) “Phase II environmental assessment” has the meaning given in s. NR 750.03 (6).

**Note:** Section NR 750.03 (6) defines “phase II environmental assessment” to mean “an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.”

(12) “Removal of abandoned containers” means the removal of abandoned containers and the proper disposal or treatment of abandoned containers.

(13) “Removal of an underground hazardous substance tank system or an underground petroleum product storage tank system” means the removal of the system and the proper disposal or treatment of the system.

(14) “Site investigation” means an investigation undertaken in accordance with ch. NR 716.

(15) “Small grant” means a grant award to a local governmental unit, for an amount of at least \$2,000 but no more than \$30,000, under this chapter.

(16) “Submittal date” includes postmark date, fax date or electronic transmittal date.

(16m) “Tax delinquent” means a site or facility located on a parcel of real property that is included in a tax certificate, issued pursuant to s. 74.57, Stats.

(17) “Underground hazardous substance storage tank system” has the meaning given in s. 292.75 (1) (d), Stats.

**Note:** Section 292.75 (1) (d), Stats., defines “underground hazardous substance storage tank system” as “an underground storage tank used for storing a hazardous substance other than a petroleum product together with any on-site integral piping or dispensing system with at least 10% of its total volume below the surface of the ground.”

(18) “Underground petroleum product storage tank” has the meaning given in s. 101.143 (1) (i), Stats.

**Note:** Section 101.143 (1) (i), Stats., defines “underground petroleum product storage tank” to mean “an underground storage tank used for storing petroleum products together with any on-site integral piping or dispensing system with at least 10% of its total volume below the surface of the ground.”

**History:** Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 04–015: cr. (3m), (8m) and (16m) Register September 2004 No. 585, eff. 10–1–04.

**NR 168.05 Eligibility.** (1) Only local governmental units that have not caused the environmental contamination that is the basis for the grant request are eligible for grants under this chapter.

(2) Grants under this chapter may be awarded to a local governmental unit only if the person that caused the environmental contamination that is the basis for the grant request is unknown,

cannot be located or is financially unable to pay the cost of the eligible activities.

**History:** Cr. Register, January, 2001, No. 541, eff. 2–1–01.

**NR 168.07 Allocation of funds. (2)** Of the funds appropriated for the grant program, 60% shall be designated to fund small grants, and 40% shall be designated to fund large grants.

**(3)** In any given fiscal year, if there are remaining funds after regular application cycles as identified in s. NR 168.11 (3), the department may fund existing eligible applications that were not funded, grants that received partial funding, grant amendment requests to increase a grant award pursuant to s. NR 168.21 (9), or accept and fund additional applications as they are submitted, for either grant category. If multiple applications or requests have the same submittal date, the department shall give preference to applications or requests in the same category as the category of available funds.

**(4)** The total amount of all grants awarded to a local governmental unit based on all application cycles for a fiscal year under this chapter shall be limited to an amount equal to 15% of the available funds appropriated under s. 20.370 (6) (et), Stats., for the fiscal year.

**(5)** If sufficient funds are available in a grant category, the department shall fund all eligible, complete applications without ranking them. If sufficient funds are not available in a grant category, the department shall score and rank all eligible, complete applications and award grants in descending order of rank.

**(6)** If sufficient funds are not available to fully fund a grant, the department shall offer the applicant the choice of receiving partial funding or withdrawing the application.

**(7)** The department may not award more than one grant for an eligible site or facility in any application cycle as identified in s. NR 168.11 (3).

**History:** Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 04–015: r. (1), am. (2) and (3) Register September 2004 No. 585, eff. 10–1–04.

**NR 168.09 Eligible activities.** Activities eligible for funding under this chapter include the following activities at an eligible site or facility:

**(1)** The investigation of environmental contamination on an eligible site or facility for the purposes of reducing or eliminating environmental contamination.

**(2)** The demolition of any structures, buildings or other existing improvements.

**(3)** The removal of abandoned containers, as defined in s. 292.41 (1), Stats.

**(4)** Asbestos abatement activities, as defined in s. 254.11 (2), Stats., conducted as part of activities described in sub. (2).

**(5)** The removal of underground hazardous substance storage tank systems.

**(6)** The removal of underground petroleum product storage tank systems.

**History:** Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 04–015: am. (4) Register September 2004 No. 585, eff. 10–1–04.

**NR 168.11 Grant application. (1) GENERAL.** Applications for grants under this chapter shall be on forms provided by the department and submitted to the following address: BF SAG Manager – RR/3, Bureau for Remediation and Redevelopment, PO Box 7921, Madison, WI 53707–7921.

**(2) CONTENTS.** A grant application shall include, but is not limited to, the following information:

(a) The name, address and designated contact person for the applicant.

(b) Information that demonstrates that the site or facility meets the definition of an eligible site or facility under this chapter.

(c) A resolution adopted by the governing body of the applicant that designates an authorized representative, commits the applicant to completing the activities listed in the grant applica-

tion if awarded funds, and grants the department access to the site or facility and grant records. The resolution shall be signed by the person authorized to sign the resolution on behalf of the applicant and shall refer to the brownfields site assessment grant program. For an application to be considered complete, a resolution shall be submitted no later than 30 days after the application due date.

(d) A description of the proposed grant activities, including:

1. The street address of the eligible site or facility.

2. The eligible activities for which the applicant is seeking funds.

3. An itemized estimate of the proposed cost of each eligible activity.

4. An itemized description of the proposed matching funds and the professional qualification of the person conducting any in-kind services.

5. A map showing the location of the eligible site or facility.

6. Current ownership of the eligible site or facility, including information on how the local governmental unit acquired the property, if applicable.

7. Evidence that the local governmental unit has legal access to the eligible site or facility so that it can conduct the activities stated in the grant application. The applicant shall provide this documentation to the department with the grant application or no later than 90 calendar days after the department notifies the local governmental unit that funds have been reserved pending submittal of the legal access documentation.

8. Certification that the person conducting professional services for the local governmental unit has the necessary legal, managerial and technical qualifications.

9. Information showing that the person that caused the environmental contamination that is the basis for the grant request is unknown, cannot be located, or is financially unable to pay the cost of the eligible activities.

**(3) APPLICATION CYCLE.** The department shall establish application due dates. The department shall have at least one application funding cycle each state fiscal year. If funds are available, there may be additional application cycles.

**(4) APPLICATION REVIEW.** The department shall review the application for completeness and may request additional information. Applications that are determined to contain inadequate, incorrect or inaccurate information shall be considered incomplete. The application is considered complete when the additional or correct information requested by the department is received.

**History:** Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 04–015: am. (1), (2) (c), and (4) Register September 2004 No. 585, eff. 10–1–04.

**NR 168.13 Application scoring. (1) GENERAL.** If the department is required under s. NR 168.07 (5) to score and rank eligible complete applications, it shall use the criteria in this section to score applications. The criteria will be applied on a statewide basis.

**(2) POINT AWARDS.** The department shall award points to the grant applications according to the following scoring criteria, listed without order of preference:

(a) Fifteen points shall be awarded to an application for an eligible site or facility that is located within a source water protection area, as defined in s. NR 243.03 (29), for a community or nontransient noncommunity water system with a groundwater source or within 600 feet of a transient noncommunity or private water supply well used for potable purposes.

(am) Fifteen points shall be awarded to an application for an eligible site or facility that is located within 500 feet of a school, park or residence.

(b) Fifteen points shall be awarded to an application for an eligible site or facility that has contamination or hazards either of which is readily accessible to the public or if there is a hazard or contamination at the site or facility and the applicant has taken action to limit access to the hazard or contamination.

(c) Five points shall be awarded to an application for an eligible site or facility that is or will be owned by a local governmental unit or a non-profit organization and will be used by the general public.

(d) Ten points shall be awarded to an application for an eligible site or facility for which the local governmental unit has initiated the formal acquisition process, or 20 points shall be awarded to an application if the applicant or another local governmental unit has title to the eligible site or facility.

(e) Five points if more than \$2,000 in past costs have been incurred, and one additional point, up to a maximum of 10 points, shall be awarded for every \$3,000 in past costs incurred. Points may be awarded only for past costs that are eligible under this chapter and have supporting documentation included with the application.

(f) One point, up to a maximum of 20 points, shall be awarded for each additional 4% of matching funds provided by the applicant or any local governmental unit above the matching funds required under s. 292.75 (7), Stats.

(g) Ten points shall be awarded to an application for a site or facility that is vacant or abandoned at the time the application is submitted.

(h) Five points shall be awarded to an application for a site or facility that is one of the following:

1. Tax delinquent at the time the application is submitted.
2. Owned by a local governmental unit and was tax delinquent at the time it was acquired by a local governmental unit.
3. Was acquired by a person, other than a local governmental unit, and was tax delinquent at any time during the period 5 years on or before the application due date.

**(3) BONUS POINTS.** The applicant may assign 29 bonus points to an application that it considers to be a priority. This may be applied to one small application and one large application over the life of the program, for each applicant. If an application to which an applicant assigned bonus points results in a grant, the department will consider those points used, whether or not the application was scored.

**(4) EQUAL SCORES.** If 2 or more applications receive the same score, applications requesting the smallest dollar amounts will be funded first.

**History:** Cr. Register, January, 2001, No. 541, eff. 2-1-01; CR 04-015: am. (2) (a), (b), (c) and (f), cr. (2) (am), (g) and (h), r. and recr. (2) (e) Register September 2004 No. 585, eff. 10-1-04.

**NR 168.15 Eligible costs.** (1) Actual costs of services and equipment provided by employees of the grantee to carry out eligible activities necessary for the grant. Equipment rental rates may not exceed the county machinery rates established annually by the department of transportation.

(2) Labor costs required for carrying out the eligible activities identified in the grant agreement. Labor costs may include salary, fringe benefits and other items determined to be appropriate by the department.

(3) Costs for laboratory analysis and professional service contracts.

(4) The costs of necessary equipment and facilities used to carry out activities stated in the grant application for the length of the grant awarded under this chapter.

(5) Costs of treatment, storage or disposal of materials that are generated as a result of conducting the eligible activities.

(6) Other costs determined by the department to be necessary to carry out the eligible activities, as approved in advance by the department.

**History:** Cr. Register, January, 2001, No. 541, eff. 2-1-01.

**NR 168.17 Matching funds.** Costs and services eligible as matching funds shall be incurred during the grant period and include:

- (1) Activities given in s. NR 168.09;
- (2) Costs of acquiring the eligible site or facility, limited to:
  - (a) The purchase price of the property,
  - (b) Payment or cancellation of delinquent taxes, and
  - (c) Acquisition fees other than legal fees;
- (3) Maintenance and security of the eligible site or facility;
- (4) Remediation activities on the eligible site or facility that are not given in s. NR 168.09, if approved by the department; and
- (5) Payment or cancellation of delinquent taxes.

**History:** Cr. Register, January, 2001, No. 541, eff. 2-1-01; CR 04-015: am. (intro.), (3) and (4), cr. (5) Register September 2004 No. 585, eff. 10-1-04.

**NR 168.19 Ineligible costs.** Costs ineligible for reimbursement under this chapter are costs that are not necessary to or not directly associated with the eligible activities established in s. NR 168.09 or established in s. NR 168.15, as determined by the department. Ineligible costs for reimbursement or as matching funds include, but are not limited to:

(1) Costs incurred outside the grant period stated in the grant contract.

(2) Costs that have been or will be reimbursed by any other local, state or federal grant programs or other sources, such as the agricultural chemical cleanup program, petroleum environmental cleanup fund act and dry cleaner environmental response program.

(3) Fines and penalties due to violation of, or failure to comply with, federal, state or local laws and regulations.

(4) Ordinary operating expenses of the applicant, such as salaries and expenses of public officials.

(5) Costs of capital equipment.

(6) Costs of license application or permit fees.

(7) Legal fees.

(8) Costs to conduct a site investigation if the site or facility would qualify for reimbursement from the petroleum environmental cleanup fund (PECFA) under ss. 101.143 and 101.144, Stats.

(9) Costs claimed as matching funds for a grant awarded under this chapter.

**History:** Cr. Register, January, 2001, No. 541, eff. 2-1-01; CR 04-015: am. (2), cr. (8) and (9) Register September 2004 No. 585, eff. 10-1-04.

**NR 168.21 Grant conditions.** (1) A grantee shall contribute matching funds of at least 20% of the grant, as required under s. 292.75 (7), Stats. An applicant pledging more than the required 20% match shall provide the pledged percentage of the total final cost.

(2) An applicant shall provide the department with written proof of legal access to the eligible site or facility to carry out all eligible activities listed in the application within 60 calendar days of notification from the department that funds have been reserved for the project, pending submittal of the legal access documentation. If the applicant is unable to meet this condition, the application is incomplete and the department shall withdraw the grant offer.

(3) The grant period is 12 months from the date of the department's signature on the grant contract unless extended under sub. (10).

(4) The grantee may request a maximum of 2 partial payments during the grant period on forms provided by the department and shall include documentation of work completed and eligible costs and match incurred by the grantee. The department may withhold 10% of the total grant amount stated in the grant agreement for final payment. The final payment request shall be made on forms provided by the department no later than 6 months after the expiration date of the grant period stated in the grant agreement.

**Note:** Forms are available upon written request to the following address: BF SAG Manager - CF/8, DNR Bureau of Community Financial Assistance, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921.

(5) Accounting for all grant funds shall be in accordance with generally accepted principles and practices. Supporting records of grant expenditures shall be maintained in sufficient detail to show that grant funds were used for the purpose for which the grant was awarded. All financial records, including invoices and canceled checks or bank statements that support all grant costs claimed by the grantee shall be kept and made available for inspection for 3 years after final payment.

(6) All of the grantee's records pertaining to the grant are subject to department review. Grant payments are contingent upon review by the department and may be adjusted if costs are determined to be ineligible.

(7) The department may conduct compliance inspections, or may require the grantee to conduct compliance inspections, on properties for which assistance has been provided under this chapter.

(8) Grantees shall provide the department with a progress report, if requested.

(9) The grantee may request, for good cause and prior to the end of the grant period, an amendment for changes to the grant award up to 10% of the original grant amount unless the amendment would increase the award to an amount that exceeds the limit set in s. NR 168.07 (4). Amendments are subject to department approval and availability of funds.

(10) Prior to the end of the grant period stated in the grant agreement, the grantee may request that the department extend the grant period for up to 12 additional months. The request shall be in writing and describe the reasons for the time extension.

(11) The grantee shall provide to the department a report of the activities completed with the funds awarded under this chapter. The report shall be submitted on forms provided by the department along with the final request for reimbursement under the grant contract.

**History:** Cr. Register, January, 2001, No. 541, eff. 2-1-01; CR 04-015: am. (2) and (11) Register September 2004 No. 585, eff. 10-1-04.

**NR 168.23 Grant enforcement and termination.**

(1) If a grantee fails to comply with the provisions of this chapter, the department may take one or more of the following actions:

(a) Costs directly related to noncompliance may be declared ineligible.

(b) Other administrative and judicial remedies may be instituted as legally available and appropriate.

(2) The department may terminate a grant awarded under this chapter for any of the following reasons:

(a) Violation of any term or condition of the grant contract.

(b) Lack of substantial progress by the grantee, without good cause.

(c) Substantial evidence that the grant was obtained by fraud.

(d) Substantial evidence of gross abuse or corrupt practices in the administration of the grant activities.

(3) If a grant is terminated under sub. (2), repayment by the grantee may be required.

**History:** Cr. Register, January, 2001, No. 541, eff. 2-1-01.

**NR 168.25 Variances.** (1) The department may approve a variance from a requirement of this chapter if all of the following conditions are met:

(a) The local governmental unit's written request for a variance clearly explains the circumstances justifying the variance.

(b) The department takes into account factors such as good cause and circumstances beyond the control of the local governmental unit.

(c) The department determines that a variance is essential to effect necessary grant actions or program objectives or where special circumstances make a variance in the best interest of the program.

(2) The department may not grant variances from statutory requirements.

**History:** Cr. Register, January, 2001, No. 541, eff. 2-1-01.